IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 861 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KANUBHAI RATNABHAI VANKAR

Appearance:

1. Criminal Appeal No. 861 of 2003

MR KT DAVE, APP for Appellant No.

MR BJ JADEJA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 05/08/2004

ORAL JUDGEMENT

1. The appellant State of Gujarat, by means of filing present Criminal Appeal under Sec.378(1)(3) of the Code of Criminal Procedure, 1973, has challenged the

order of acquittal dated 31.3.2003 passed by ld. Chief Judicial Magistrate, Kutchh at Bhuj in Criminal Case No.494/1993. The respondent (hereinafter referred to as the accused) Kanabhai Ratnabhai Vankar was chargesheeted for the offences punishable under Sec.417, 409 of Indian Penal Code and at the conclusion of the trial, the Court held that the prosecution had failed to prove the charge beyond reasonable doubt and, therefore, the accused requires to be acquitted. Accordingly, vide impugned order, the respondent accused came to be acquitted.

2. The facts leading to the present Cri. Appeal are narrated by the State in para-2 of the memo of the appeal and for convenience, it would be proper to narrate the facts in brief.

(i) The prosecution case is based on the complaint filed by one Shri M.A. Malek, Sub Treasury Officer, Rapar. He was serving as Sub Treasury Officer since last 2 years and in his office one Mr. D.S. Gosai was serving as Cashier and the respondent accused was serving as a Jr.Clerk. On 27.7.1990, Shri Gosai was instructed to go to Bhuj Head Office for collecting Stamp on 30.7.1990 and, therefore, the accused was given charge of Cashier after following the necessary procedure. Accused was also given keys of cash box and strong room when charge was given to him. According to the prosecution, 28.07.1990 and 29.07.1990 were holidays. Thereafter on 30.07.1990, somewhere between 6.30 & 7.00 A.M., the accused came to the house of the complainant and told him that he has some urgent work in the office being the last day of the month and, therefore, he may be given keys of the office. Accepting the say of the accused, the complainant gave entire bunch of keys including the keys of the strong room, but at about 8.00 A.M. the accused came back to the house of the complainant and intimated him that because of some guest, he returned from the office and he will have to go to his house and he may return in the late hours of the night.

(ii) It is the case of the prosecution that as the accused had not returned nor had handed over the keys to him, complainant tried to inform the Head Quarters at Bhuj through telephone, but he failed and, therefore, he informed the Mamlatdar in writing about the incident. As he was not responded by the Mamlatdar, he informed the Collector about the incident. Thereafter, Dist.Treasury Officer contacted the complainant and in turn complainant informed the Dist. Treasury Officer about the incident and he also requested the Dist. Treasury Officer to come with duplicate keys. Suspecting something wrong and by

way of caution, in the presence of the Treasury Officer, Rapar, Mamlatdar Rapar and Taluka Development Officer, Rapar, strong room of the office was opened and on checking, it was found that out of Rs.11,75,000/ which was kept in the strong room, only Rs.8,75,000/ were found and as Rs.3 Lakhs were missing from the cash, complainant approached Rapar Police Station and filed complaint. After investigation, police found that the accused had committed offence punishable under Sections 417, 409 of Indian Penal Code and, therefore, he was chargesheeted accordingly.

3(i) Ld. APP Mr. KT Dave has taken me through the judgment under challenge and the facts placed before the Court by the witnesses examined during the course of trial.
(ii) It has come on record that the strong room of Rapar Sub Treasury Office was having 2 keys and one key was remaining with Cashier and another was being kept with Sub Treasury Officer. One set of keys were also kept at Head Office at Bhuj i.e. District Treasury Office, Bhuj. The trial Court has discussed the evidence of handing over of charge of Mr.Gosai and the fact that who was having both the keys of the strong room at that time. Undisputedly, Rapar is a very small town and Sub Treasury Officer is having staff of only 4 persons. Ld. Trial Judge after appreciating the evidence of Prosecution Witnesses Amarsing Raylabhai, Kuvarnath Vejnathbhai and Hematram Mayaram and Dineshgar Shankargar Gosai has observed that there is no signature of the accused of accepting the charge of cash lying in the cash box. It is on record that for the very same incident, the department has prosecuted two persons i.e. complainant STO Shri Malek and Cashier Shri D.S.Gosai for the error committed by them in handling the affairs qua very incident and no formal criminal prosecution was instituted against them but they are departmentally punished. Ld. Judge has considered many aspects and one fact emerging from record is that no cash was either recovered from the present accused nor any part of the same is recovered under any recovery or discovery panchanama from the place that can be said to have been shown by the accused or suspected by the investigating agency.

(iii) Ld. trial Judge has reached to a positive finding that the prosecution has failed in establishing one crucial aspect that on 27.7.1990 accused was given charge of Cashier and keys which were kept normally with Shri Gosai were handed over to the accused and there is no cogent evidence that both the keys i.e. one which was

kept with STO and another which normally remaining with Shri Gosai came in the hands of the accused on the relevant day. The conduct of the accused ofcourse is an incriminating circumstance, but in absence of other evidence, that circumstance by itself is not sufficient to hold the accused guilty in such or similar cases. An element of entrustment should also be brought on record beyond doubt.

4. Ld. trial Judge was assisted by ld. PP and ld. counsel appearing for the defence and number of authorities were cited and they have been discussed in detail in the impugned judgment and especially in paras 33 to 49 of the said judgment. Ld. trial Judge fas rightly appreciated and distinguished the facts of the present case and the facts of the decision reported in 1972 CrLJ 1202 (Surendraprasad Varma v/s State of Bihar), and in absence of cogent evidence that the accused was in charge of the cash box on the relevant date on account of visit of Shri Gosai of Bhuj, it was difficult for the trial Judge to convict the accused. It is rightly held that atleast, allegations are not proved beyond reasonable doubt.

5. The reasons recorded by the ld. Magistrate are logical and there is no element of perversity or patent illegality. It is true that the facts of the decision in the case of Hariram v/s State of Rajasthan, reported in AIR 2000 SC 1647 are materially different. But number of decisions have been referred to and relied upon in this decision observing that where there is no infirmity in arriving at the conclusion, the finding of acquittal normally should not be interfered with. It is true that this Court is supposed to assign reasons while confirming the judgment and order of acquittal recorded by the trial Court as held by the Apex Court in the case of State of Orissa v/s Debraj Tarini, reported in 2000(1) SCC 173, but adopting the reasons assigned by the trial Court, the appeal against the judgment and order of acquittal can be decided and it is not necessary to rewrite the judgment or to assign individual separate reasons. The Apex Court in a decision in the case of Dwarkadas v/s State of Hariyana, reported in (2002)1 SCC 204 , has reiterated the accepted principles of law where it has been held that the judgment and order of acquittal normally should not be reversed merely because the other view is also possible. In the same way, the observations of the Apex Court in the case of Kanshiram v/s State of Madhya Pradesh (Re: Para-21), reported in AIR 2001 SC 2902, in respect of appeal against the order of acquittal, positively would help the respondent accused and not to

the appellant State.

6. For short, there is no merits in the appeal preferred by the appellant State and, therefore, leave refused and appeal is dismissed. Impugned judgment and order of acquittal passed by ld. Chief Judicial Magistrate is hereby confirmed.

[C.K. BUCH, J]

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